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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,627	05/16/2005	Daniele Favaro	AEG-37595	9650
116 7590 04/03/2009 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER WALDBAUM, SAMUEL A	
			ART UNIT 1792	PAPER NUMBER
			MAIL DATE 04/03/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,627

Applicant(s)

FAVARO ET AL.

Examiner

SAMUEL A. WALDBAUM

Art Unit

1792

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116, hereafter '116) in view of Geiger (U.S. 4,064,887, hereafter '887) and Lin et al (U.S. 6,596,232, hereafter '232).

3. Claim 1: '116 teaches an automatic dishwasher, especially for built-in kitchenettes, comprising:

a cabinet equipped with a front door that seals the wash tub (Fig. 1 shows a cabinet surrounding the machine and part 9 shows the door that seals the tub);

housing at least one first and one second spray arm for washing the dishes placed in at least one rack (Fig. 1, part 11 shows the one rack, while parts 12 and 13 show the two sprayers);

said tub being closed on the bottom by a downward sloping panel that directs the wash water into a sump hopper which serves to collect and drain the water (Fig. 1, part 17 is the collector at the bottom of the downward sloping panel of the bottom of the machine);

'116 does not teach that the first spray arm extends coaxially with the sump hopper and that the second arm extends at a right angle to the bottom sloping panel.

'887 teaches that a spray arm is coaxially aligned with the sump pump (Fig. 1 where part 22 is the sump pump, part 23 is the motor and part 26 is the first spray arm.) By placing the spray arm above the sump pump it provides support to the spray arm (Col. 3, line 37-46), It would have been obvious to one ordinary skilled in the art when the invention was made that to have placed the first spray arm above the sump pump to have provided support to the first spray arm, by moving the sump to be under the spray arm, thus allowing the spray arm with enough room to rotate.

'116 teaches that having the two arms that over lap is essential to increase the cleaning power of the washer without increasing the energy cost or the washing time ([0010]-[0014]). '887 teaches to optimize cleaning contact between the dishes and the sprayer to put the sprayer at an angle (Fig. 12 part 40, col. 4, line 45-78), also by angling the spray arm at a right angle to the slope of the bottom of the machine it avoids contact with the bottom, because when the arm is parallel to the bottom it can not hit the bottom (col. 4, line 1 - 69, col. 5, line 1 - 21). '232 is solving the same problem of the applicant of having a rinse arm parallel to the slop of the floor. '232 teaches that a spray arm can be parallel to the slop of the bottom of the floor (fig. 5a, shows that the spray arms are parallel to the bottom of the floor). Therefore, by angling the second spray arm as taught by '887 at a right angle to the bottom as taught by '232 in apparatus '116 the

overlap between the two spray arms is increased while the second spray arm avoids contact with the bottom because it is parallel to it. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have positioned the second spray arm above the sloped bottom as taught by '232 and with its axis of rotation at a right angle to the bottom in apparatus '116 in order to have increased and optimized the power wash zone, and to have avoided contact with the bottom or other objects as taught by '887.

'116 shows two spray arms overlapping to create the power clean area (Fig. 1, parts 12 and 13 overlap, Fig. 2(b) shows overlapping region). '116 teaches that the two spray arms avoid hitting each other by timing the two arms so that they are always angled 90 degrees from each other (paragraph [0027]). The resulting combination of '116 in view of '887 and '232, where the plane of rotation of the 1st arm is horizontal and the plane of rotation of the 2nd arm is sloped. Therefore the 2nd plane of rotation must necessarily partly extend under the plane of rotation of the first spray arm.

4. Claim 2: '116 teaches a sump hopper serving to collect and drain the wash water is located in an off-center position on the bottom of the wash tub (Fig. 1, shows that the collector is in an off-center position on the bottom).

Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and Lin et al (U.S. 6,596,232), as applied to claims 1-3 above, and further in view of Welch (U.S. 7,032,604, hereafter '604).

'116 in view of '887 and '232 teach the limitation of claim 1 above.

5. Claim 4: They do not teach that the door extends across the full width of the cabinet. '604 teaches that the door extends the full length of the cabinet (Fig. 1, part 22, shows the door at

a open position that extends the full length of the cabinet). One of ordinary skill in the art would have understood that if the door did not extend the full width of the cabinet, that the rack containing the wares would not have been able to be pulled out. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have used a door that extends the full length of the cabinet to have made it possible to pull out the rack.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and Lin et al (U.S. 6,596,232) as applied to claim 1 above, and in further view of Gardell (U.S. 4,765,697, hereafter '697).

'116, '887 and '232 teach all the limitation of claim 1 above.

6. Claim 5: They do not teach that the door is a solid component provided with a trim panel. '697 teaches a solid door with a trim panel (col. 1, line 40 - 68), by having the trim it allows the washing machine to look decorative in the environment of the kitchen (col. 1, line 40 - 68). Therefore it would have been obvious to one skilled in the art at the time the invention was made to have included a trim panel to the door for the dishwasher to have made it look decorative.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and Lin et al (U.S. 6,596,232), as applied to claim 1 above, and further in view of Willet (U.S. 5,215,491, hereafter '491).

'116, '887 and '232 teach all the limitations of claim 1 above.

7. Claim 6: They do not teach the fact that the door has a transparent window. '491 teaches a transparent window located in the door (abstract) to allow the user to look in the dishwasher to see how the washing is progressing (col. 6, line 60 - 68, col. 7, line 1 - 10). Therefore it would

have been obvious to one ordinary skilled in the art that the time the invention was made to have included a door with a transparent window to have allowed the user to look into the dishwasher.

Response to Arguments

8. Applicant's arguments filed January 22, 2009 have been fully considered but they are not persuasive.

9. Applicant is first arguing that the '116 reference does not teach that a spray arm that is angled and parallel with the bottom of the dishwasher. '116 teaches that the spray arms can overlap (see above rejection). '887 teaches that a spray arm can be angled (see above rejection) and '232 teaches that the angled spray arm can be parallel to the slop of the bottom of a spraying chamber (see above rejection). Thus it is well within the ordinary skill level of one of ordinary skill in the art at the time the invention was made to have angled one of the spray arms to run parallel to the slop of the bottom wall and to have overlapped the other spray arm.

10. Applicant is also arguing that the prior art does not give a reason for placing the spray arm above the sump/pump region. The prior art clearly teaches and shows the arm above the region and that the sump/pump supports the wash arm (see above rejection). Applicant argues that the primary reference already teaches that the spray arm is supported. What the art clearly shows that the spray arm can be supported in multiple configurations and it is well within the ordinary skill level of one of ordinary skill in the art to have place the wash arm above to the sump/pump region so that the sump/pump region can provide support for the wash arm.

11. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so

long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 6:20-3:50, F 6:30-10:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. A. W./
Examiner, Art Unit 1792

/FRANKIE L. STINSON/
Primary Examiner, Art Unit 1792